



LIBRARY  
OF  
CONGRESS

In the Matter of

Distribution of 1995, 1996, 1997  
and 1998 Digital Audio Recording Funds

Docket No. 99-3 CARP DD 95-98

## ORDER

COPYRIGHT  
OFFICE

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Arbitration  
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On May 4, 1999, the Library published a notice in the **Federal Register** requesting comments from those parties who had filed claims to the 1995, 1996, 1997 and 1998 royalty fees in the Musical Works Funds on whether controversies existed as to the distribution of these funds. In addition, the Library directed those claimants with an interest in participating in a Copyright Arbitration Royalty Panel (CARP) that will determine the distribution of these funds to file a Notice of Intent to Participate.

The Library received comments and Notices of Intent to Participate from the following parties: Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., The Harry Fox Agency, Inc., The Songwriters Guild of America, and Copyright Management, Inc. (collectively, the "Settling Parties"); James Cannings/Can Can Music; Carl DeMonbrun/Polyphonic Music, Inc.; Alicia Carolyn Evelyn; and Eugene Curry/Tajai Music, Inc.

The Settling Parties requested that the Office grant additional time for the parties to conclude negotiations and finalize settlement. The Settling Parties also asked that the Office designate September 10, 1999, as a date on which all parties who have submitted a Notice of Intent to Participate must report on the status of the negotiations. In response, the Office issued an Order on August 17, 1999, designating October 15, 1999, as the date by which the parties to this proceeding shall report, in writing, the status of their settlement negotiations. Order in Docket No. 99-3 CARP DD 95-98 (August 17, 1999).

In the meantime, the Office is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the distribution of the royalty funds in the 1995-1998 Musical Works Funds. The Office is setting the schedule even as negotiations continue in order to give notice to all parties that, in the event no universal agreement is reached, the Office intends to begin the arbitration phase of this proceeding with the filing of direct cases on November 15, 1999. This schedule will allow the parties to conclude discovery before the end of the year, thereby avoiding any undue delay in resolving any remaining controversies.

## **Scheduling of the Proceeding**

A. Commencement of the proceeding. A royalty distribution proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in §251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of §251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

B. Precontroversy Discovery Schedule and Procedures. Any party that has filed a Notice of Intent to Participate in the above-captioned distribution proceeding is entitled to participate in the precontroversy discovery period. Each party so qualified may request of an opposing party nonprivileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The Library of Congress rules do not specify any particular steps or regimen to the precontroversy discovery period. We believe, however, that it is necessary to establish procedural dates for exchange of documents and filing of motions within the 45-day period to provide order and allow discovery to proceed smoothly and efficiently.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

<b>Action</b>	<b>Deadline</b>
Filing of Written Direct Cases	November 15, 1999
Requests for Underlying Documents Related to Written Direct Cases	November 22, 1999
Responses to Requests for Underlying Documents	November 29, 1999
Completion of Document Production	December 3, 1999
Follow-up Requests for Underlying Documents	December 8, 1999

Responses to Follow-up Requests	December 14, 1999
Motions Related to Document Production	December 17, 1999
Production of Documents in Response to Follow-up Requests	December 22, 1999
All Other Motions, Petitions, and Objections	December 29, 1999
Initiation of Arbitration	February 28, 2000

The precontroversy discovery period, as specified by §251.45(b) of the rules, begins on November 15, 1999, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate must file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's case. Parties must comply with the form and content of written direct cases as prescribed in §251.43. The Library also directs the attention of the parties in this proceeding to §251.43(d) which requires that "each party must state in the written case its percentage or dollar claim." Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on November 15, 1999, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by November 22, 1999, and responses to those requests are due by November 29, 1999. Documents which are produced as a result of the requests must be exchanged by December 3, 1999. It is important to note that all initial document requests must be made by the November 22, 1999, deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by November 22, 1999; otherwise, the party is not entitled to production of the study.

In determining whether a certain document, or category of documents, is discoverable under §251.45(c)(1), the parties should consult prior discovery rulings of the Library. Specifically, the Library refers the parties to the following: Order in Docket No. 94-3 CARP CD 90-92 (October 30, 1995); Order in Docket No. 96-5 CARP DSTRA (November 27, 1996); Order in Docket No. 96-5 CARP DSTRA (January 21, 1997); Order in Docket No. 96-3 CARP SRA (February 7, 1997).

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by December 8, 1999, and responses to those requests are due by December 14, 1999. Any documentation produced as a result of a follow-up request must be exchanged by December 22, 1999. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by November 22, 1999. If, after receiving a copy of the study, the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the December 8, 1999, deadline. Again, failure to make a timely follow-up request would waive that party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by December 17, 1999. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by December 29, 1999, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, but are not limited to, objections to arbitrators appearing on the arbitrator list under §251.4, and petitions to dispense with formal hearings under §251.41(b).

C. Discovery Requests. Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is neither encouraged nor required.

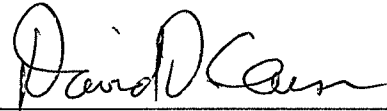
D. Filing and Service of Pleadings. Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be in accordance with 37 CFR 251.44. A pleading is timely filed with the Library if it is delivered to the Copyright Office, Library of Congress, by hand, between 9 a.m. and 5 p.m. at the following address: James Madison Memorial Building, Room 407, 101 Independence Avenue, S.E., Washington, D.C. 20540; or it is delivered to the official address contained in §251.1, on or before the filing date. "Delivered to" the Post Office box contained in §251.1 means that it is in the box on or before the filing date, not that it is in the mail or has arrived at the Southwest Station Post Office for delivery. It is the responsibility of the party submitting a pleading to make sure that the pleading is delivered to the Library on or before the filing deadline.

Likewise, it is the responsibility of the party submitting a pleading to make sure that the pleading is delivered to each party appearing on the official service list to this

proceeding. Service must be made on each party by means no slower than overnight express mail on the same day that the pleading is filed with the Library. Any pleading which is not timely filed or timely served on the parties shall, upon motion for good cause of an affected party, be stricken.

E. Initiation of Arbitration. Arbitration proceedings shall be initiated on February 28, 2000, which shall begin the 180-day arbitration period prescribed in 17 U.S.C. 802(e). The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

**SO ORDERED.**

A handwritten signature in cursive script, appearing to read "David O. Carson", written over a horizontal line.

By: David O. Carson,  
General Counsel.

**DATED:** September 21, 1999